

Message Text

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E.O. 11652: N/A

TAGS: EAIR, ICAO

SUBJECT: SEPT. DIPLOMATIC CONFERENCE ON WARSAW CARGO
REVISION

FOR U.S. REP. ICAO

1. INTERAGENCY GROUP ON WARSAW HAS RECENTLY REVIEWED
OUTSTANDING ISSUES PENDING FOR WARSAW CARGO REVISION. A
MAJOR PROBLEM REMAINING IS RESOLVING OF GOLD CLAUSE
QUESTION, IN VIEW OF UNCLEAR INTERNATIONAL ACTION IN THIS
AREA AT THIS TIME. THIS PROBLEM PERSISTS ALSO WITH
RESPECT TO RATIFICATION OF GUATEMALA PROTOCOL. FOREIGN AND
U.S. CARRIERS ADVISED US JUST TWO WEEKS AGO THAT THEY
SUPPORT PROTOCOL AND PROPOSED U.S. "DOMESTIC SUPPLEMENT;"
HOWEVER, FOLLOWING MEETING BETWEEN THEM IN GENEVA AT END
OF JANUARY, CONCLUDED THEY WOULD NOT FAVOR RATIFICATION
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UNTIL GOLD CLAUSE IS SATISFACTORILY REVISED. IN ADDITION

IT HAS ONLY RECENTLY BECOME CLEAR THAT RELIANCE ON AN "OFFICIAL GOLD PRICE," AS IN PAST, WILL PROBABLY NOT BE SATISFACTORY. SIGNIFICANCE OF GOLD CLAUSE PROBLEM HAS NOT BEEN FULLY APPRECIATED UNTIL LAST 4 WEEKS OR SO AND DEVELOPED IN LIGHT OF RECENT EVENTS REFERRED TO.

2. WE BELIEVE GOLD PROBLEM WILL BE DIFFICULT TO RESOLVE, NOT ONLY BECAUSE OF UNSETTLED INTERNATIONAL SITUATION, BUT DUE TO WIDELY DIVERGING POSSIBLE APPROACHES AND EXPECTATION

THAT SOME WILL BE PRESSED BY CERTAIN GROUPS OF COUNTRIES AND OTHERS WILL FIND THESE UNACCEPTABLE. WE FEEL IT IS IMPORTANT THAT ATTENTION BE GIVEN THIS PROBLEM AT EARLIEST PRACTICABLE DATE TO AVOID SUBSTANTIAL SLIPPAGE IN MOVING GUATEMALA PROTOCOL TO SENATE FOR ADVICE AND CONSENT TO RATIFICATION. LIKEWISE, PROBLEM MUST BE RESOLVED BEFORE REVISION IN WARSAW CARGO ARE FINALIZED FOR RATIFICATION BY COUNTRIES. WE ARE NOT, HOWEVER, CERTAIN OF BEST APPROACH TO TAKE, AND WOULD INTEND TO SOUND OUT SOME OF THE MAJOR AVIATION COUNTRIES ON THEIR THOUGHTS.

3. OUR THINKING TO DATE IS AS FOLLOWS:

(A) IT IS CLEARLY TOO LATE TO RAISE SUBJECT AND HOPE FOR SATISFACTORY RESULT AT APRIL LEGAL SUBCOMMITTEE MEETING, AND INAPPROPRIATE FOR SPECIAL AD HOC GROUP ON WARSAW FOLLOWING LEGAL SUBCOMMITTEE -- THESE MEETINGS SHOULD PROCEED AS SCHEDULED;

(B) IT WOULD BE DIFFICULT TO SCHEDULE A SPECIAL MEETING PRIOR TO SEPT. DIPLOMATIC CONFERENCE TO DEVELOP SATISFACTORY PROVISION FOR THE DIPLOMATIC CONFERENCE, AND PERHAPS TOO EARLY FOR FORMULATION OF POSITIONS ON GOLD CLAUSE, ANYWAY;

(C) A POSSIBLE APPROACH WOULD BE TO RELY ON SEPT. DIPLOMATIC CONFERENCE TO RESOLVE GOLD QUESTION -- PERHAPS ITS TERMS OF REFERENCE COULD BE EXPANDED TO ALLOW FOR APPROPRIATE MODIFICATION OF THE GUATEMALA PROTOCOL IN THIS AREA ALSO, OR THIS COULD BE DONE SEPARATELY, LATER
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(THIS APPROACH CARRIES RISK THAT SATISFACTORY RESOLUTION WOULD NOT BE ACHIEVED IN SEPT. AND UNDERESTIMATES COMPLEXITIES OF PROBLEM, ALL THE MORE SO IF GUATEMALA PROTOCOL IS TAKEN UP AS WELL AS CARGO PROVISION; IT MUST BE BORNE IN MIND THAT, NO PREPARATORY WORK ON SUBJECT WOULD HAVE BEEN DONE);

(D) ANOTHER POSSIBLE APPROACH, IF RISK DESCRIBED IN (C)

BECOMES REALITY, WOULD BE TWO STAGE CONFERENCE, WITH SECOND SESSION SCHEDULED 6-9 MONTHS LATER, WORK BEING ADVANCED AS FAR AS POSSIBLE IN SEPT. AND THEN ADJOURNED;

(E) ANOTHER APPROACH WOULD BE POSTPONEMENT OF SEPT. DIPLOMATIC CONFERENCE FOR 6-12 MONTHS AND SCHEDULING OF LEGAL COMMITTEE FOR CONSIDERATION OF SUBJECT (INCLUDING EFFECT OF GOLD CLAUSE FOR WARSAW ON OTHER INTERNATIONAL LAW CONVENTION) (PERHAPS ALSO OTHER WARSAW CARGO ISSUES AND/OR APRIL LEGAL SUBCOMMITTEE WORK COULD BE CONSIDERED

BY LEGAL COMMITTEE) -- SCHEDULING COULD BE APPROXIMATELY DATES OF PRESENT SEPT. DIPLOMATIC CONFERENCE OR LATER;

(F) IN ANY EVENT, WE WOULD NOT INTEND TO CAMPAIGN FOR A SPECIFIC APPROACH, BUT SIMPLY RAISE MATTER AND SUPPORT ANY SENSIBLE PROCEDURES ON WHICH CONSENSUS FORMS.

4. U.S. REPRESENTATIVE SHOULD REVIEW ABOVE WITH COUNCIL PRESIDENT BINAGHI AND LEGAL DIVISION HEAD GOMEZ JARA; AND REPORT THEIR REACTION TO PROBLEMS WE RAISE AND POSSIBLE ALTERNATIVE APPROACHES. ALSO, AT YOUR DISCRETION YOU MAY REVIEW PROBLEM AS WE SEE IT WITH OTHER COUNCIL REPS. FOLLOWING YOUR REPORT, WE EXPECT TO RAISE SUBJECT WITH SELECTED CAPITALS AS APPROPRIATE.

5. ONLY DISCUSSION ON THIS SUBJECT TO DATE WITH FOREIGN REPS. INVOLVED KEAN (UK), HEFFERMEL (NORWAY) AND BLOM (SWEDEN), WHO RAISED SUBJECT WITH FRANK WILLIS ON LONDON TRIP LATE JAN. THRUST OF THEIR REMARKS WAS THAT THERE WAS A VERY REAL PROBLEM HERE WHICH NEEDED TO BE DEALT WITH SOONEST AND DID U.S. HAVE A SPECIFIC PROPOSAL TO MAKE? (THEY DID NOT, BUT INDICATED FLEXIBILITY AS TO POSSIBLE UNCLASSIFIED

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APPROACH IN GENERAL DISCUSSION COVERING ALTERNATIVES DESCRIBED PARA 3 AND OTHER VARIANTS.) WILLIS INDICATED U.S. WOULD GET BACK TO THEM WHEN WE HAD PUT TOGETHER OUR THOUGHTS.

6. ADD TO D ABOVE THAT POSSIBLY THE 2ND STAGE COULD BE IN PLACE OF 1976 LEGAL COMMITTEE. INGERSOLL

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